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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/988,785	11/20/2001	Tsuneyuki Kikuchi	070639-0136	9130

22428   7590   03/11/2009
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EXAMINER
BATURAY, ALICIA

ART UNIT	PAPER NUMBER
2446	

MAIL DATE	DELIVERY MODE
03/11/2009	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Advisory Action Before the Filing of an Appeal Brief	Application No.	Applicant(s)
	09/988,785	KIKUCHI, TSUNEYUKI
	Examiner	Art Unit
	Alicia Baturay	2446

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED <u>04 March 2009</u> FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

   a) ☒ The period for reply expires <u>3</u> months from the mailing date of the final rejection.

   b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

      Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will <u>not</u> be entered because

   (a)☐ They raise new issues that would require further consideration and/or search (see NOTE below);

   (b)☐ They raise the issue of new matter (see NOTE below);

   (c)☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or

   (d)☐ They present additional claims without canceling a corresponding number of finally rejected claims.

      NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).

5. ☐ Applicant's reply has overcome the following rejection(s): _____.

6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).

7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

   The status of the claim(s) is (or will be) as follows:

   Claim(s) allowed: *None*.

   Claim(s) objected to: *None*.

   Claim(s) rejected: *90-92,95,97-100,103,105-108,111 and 113*.

   Claim(s) withdrawn from consideration: *93,94,96,101,102,104,109,110 and 112*.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will <u>not</u> be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).

9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will <u>not</u> be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).

10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:

      See Continuation Sheet.

12. ☐ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). _____.

13. ☐ Other: _____.

/Jeffrey Pwu/
Supervisory Patent Examiner, Art Unit 2446

U.S. Patent and Trademark Office
PTOL-303 (Rev. 08-06)   Advisory Action Before the Filing of an Appeal Brief   Part of Paper No. 20090309

Continuation of 11. does NOT place the application in condition for allowance because:

Applicant Argues: Neither Douglis nor Rao, alone or in combination, discloses or suggests a server as claimed in the present independent claims including a decider configured to determine whether to alter a statistic based at least partially on (i) a comparison of a first item of control information with an item of information related to a client terminal and (ii) a comparison of a second item of control information with a particular item of information related to an application server, where the first item of control information and the second item of control information are obtained from a packet received by the server.

In Response: The examiner respectfully submits that the combination of Douglis and Rao teaches determining whether to alter a statistic based (If the customer is willing to pay a premium to avoid this burden. The time-out policy may be made sensitive to customer specification that might even override the ISP's concerns. For example, a customer may specify that when the customer is calling from a long distance that the ISP should disconnect more quickly than otherwise, even if the ISP has plenty of capacity - see Douglis, col. 3, line 57 - col. 4, line 46) at least partially on (i) a comparison of the first item of control information (Source address - see Rao, col. 9, lines 30-43) with an item of information related to a client terminal (The identity of the user who is currently using modem 20-i. Different thresholds can be applied for different users - see Douglis, col. 4, lines 19-22) and (ii) a comparison of the second item of control (Destination address - see Rao, col. 9, lines 30-43) with a particular item of information related to an application server (Each of the ISP modems maintains an associated timeout threshold - see Douglis, col. 3, lines 6-9).

Rao teaches a call policy database consisting of a call policy records corresponding to the incoming call. Different policies may be applied based on a source address or a destination address (see Rao, col. 9, lines 30-43). So the destination address is compared to call policy records in the database. When a policy record is found that matches the incoming call, the policy on that record is applied to that call. Therefore, there is an element of determining found in Rao that can be properly combined with that of the Douglis reference.

In this case, it has been shown that Douglis is directed to an arrangement where users are connected to an ISP through a bank of modems, a time-out threshold is then selected for the user based on the user's connection pattern (see Douglis, Abstract). In analogous art, Rao is drawn to a physical network switch partitioned into a plurality of virtual routers where each virtual router has allocated to it a set of resources and routing tables (see Rao, Abstract).

Additionally, the motivation to combine Douglis and Rao was given in the rejection as "to fulfill a need for a network switch capable of providing fault-tolerant and efficient services that will accommodate the increase in the number and the variety of network traffic (Rao, col. 2, lines 7-9)."

Moreover, the KSR decision supports the rationale that all the claimed elements were known in the prior art and one skilled in the art could have combined the elements as claimed by known methods with no change in their respective functions, and the combination would have yielded predictable results to one of ordinary skill in the art at the time of the invention. Douglis was used as the primary reference, which is seen as disclosing all of the claimed subject matter except for teaching a first and second item of control information from a packet. However, these limitations are covered by Rao. So all of the component parts of the claim are known in Douglis and Rao. Thus, it would have been obvious to one having ordinary skill in the art to use a first and second item of control information from a packet taught by Rao with the adaptive modem connection times discussed in the Douglis reference, since the first and second items of control information could be used in combination with the adaptive modem connection times to achieve the predictable results of providing a method of identifying users in connection with their individual disconnection times for modem use. A system could use the source or destination address from a packet to look up the record of a user to determine each user's policy record listing their timeout time.

Thus, it would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the teachings of Douglis and Rao.

Douglis teaches the statistic that can be altered as the timeout threshold. There is nothing in the claim language to suggest that the statistic and the particular item of information related to the application server are mutually exclusive. Therefore, this renders the rejection proper, and thus the rejection stands.